

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUSSO BAILEY,

Plaintiff,

v.

D. ROOT, et al. ,

Defendants.

Case No. 10cv367 BTM(CAB)

**ORDER DENYING MOTION TO
RECUSE AND ORDERING ENTRY
OF JUDGMENT**

In an order filed on July 12, 2010, the Court construed statements made by Plaintiff regarding the disqualification of Judge Moskowitz based on a prior lawsuit filed by Plaintiff in the United States Court of Federal Claims, as a motion for Judge Moskowitz to recuse from this case. The Court granted Plaintiff leave to file a memorandum of points and authorities in support of his motion to recuse on or before August 2, 2010. On July 19, 2010, Plaintiff filed a document titled "Objection to Court's Motion to Recuse," in which Plaintiff makes rambling accusations against Judge Moskowitz.

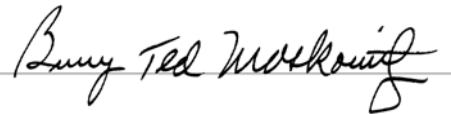
Plaintiff's prior lawsuit (Bailey v. United States, 09cv780 LJB), which was against the United States but complained of adverse rulings previously made by Judge Moskowitz and other judges in the Southern District of California and the Ninth Circuit, is not grounds for recusal. Courts have explained that "a judge may not be recused merely on the ground that he is a defendant to a lawsuit based on a prior adverse ruling involving the movant." In re Basham, 208 B.R. 926, 935 (B.A.P. 9th Cir. 1997). See also United States v. Studley, 783

1 F.2d 934, 940 (9th Cir. 1985) ("A judge is not disqualified by a litigant's suit or threatened suit
2 against him . . . or by a litigant's intemperate and scurrilous attacks.") Therefore, Plaintiff's
3 motion to recuse is **DENIED**.

4 In addition, in an order filed on July 14, 2010, the Court dismissed Plaintiff's Complaint
5 but gave Plaintiff leave to file an amended complaint on or before July 29, 2010. As of this
6 date, Plaintiff has not filed an amended complaint. Therefore, the Clerk shall enter judgment
7 **DISMISSING** this case without prejudice.

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9 **IT IS SO ORDERED.**

10 DATED: August 4, 2010

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13 Honorable Barry Ted Moskowitz
United States District Judge